REMARKS IN REGARD TO CLAIM REJECTIONS - 35 U.S.C. § 102

The Examiner rejected claims 1, 3-5 and 10 under 35 U.S.C. § 102(e) as being anticipated by Shao et al. (U. S. Patent 6,124,194). Applicant respectfully disagrees.

The Examiner has restated his argument that, regarding claims 1 and 10, Shao et al. teach and antifuse comprising: a lower insulating layer, a lower Cu metal layer ***disposed over a metal layer***; a lower barrier layer; an antifuse material layer; an upper barrier layer; an upper insulating layer; and an upper Cu metal layer. However, the antifuses as taught by Shao at al. and Applicant are very distinct. Applicant has amended the claims to more fully reflect his invention and, in light of the amendments, Applicant's claims are not anticipated by Shao et al.

If a prior art reference cited as anticipating a claimed invention is shown to lack a characteristic of the claimed invention, that proof negates the assertion that the claimed invention was described in the prior art. *In re Mills*, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990). Thus, amended claims 1 and 10 are not anticipated by Shao et al.

If the prior art reference lacks a characteristic of the claimed invention and that proof negates the assertion that any independent claim was described in the prior art, then any dependent claim cannot be anticipated by the same prior art reference. Thus, claims 3, 4 and 5 cannot be anticipated by Shao et al.

REMARKS IN REGARD TO CLAIM REJECTIONS - 35 U.S.C. § 103

The Examiner states that claims 2 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shao et al. in view of Yeouchung et al. (U.S. Patent 6,001,693). Applicant respectfully disagrees. In light of the amended claims, Applicant respectfully requests that the Examiner reconsider his rejection.

"The prior art references must teach or suggest all the claim limitations." MPEP § 2142; *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03; *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Thus, because claim 2 is dependent on amended claim 1, it is not obvious over Shao in light of Yeouchung.

As to claims 6 through 9, they all depend on claim 2. If an independent claim is found to be non-obvious, all claims depending therefrom are non-obvious. *In re Fine,* 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988).

CONCLUSION

For the foregoing reasons, Applicants submit that all of the amended claims and those depending therefrom in this application, claims 1 through 10, are in condition for allowance and Applicants respectfully request reexamination of the present application, reconsideration and withdrawal of the present rejections. Should there be any further matter requiring consideration, the Examiner is invited to contact the undersigned counsel.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,
Sierra Patent Group, Ltd.

Dated: December 11, 2002

Sierra Patent Group
PO Box 6149
Stateline, NV 89449
(775) 586-9500

Kristin C. Castle
Reg. No.: 47,208